

1 A bill to be entitled
2 An act relating to searches of cellular phones and
3 other electronic devices; amending s. 934.01, F.S.;
4 revising and providing legislative findings; amending
5 s. 934.02, F.S.; redefining the term "oral
6 communication"; defining the terms "microphone-enabled
7 household device" and "portable electronic
8 communication device"; amending s. 934.21, F.S.;
9 revising the exceptions to conduct that constitutes
10 unlawful access to stored communications; conforming a
11 provision to changes made by the act; amending s.
12 934.42, F.S.; defining the terms "mobile tracking
13 device" and "real-time location tracking"; authorizing
14 an investigative or law enforcement officer to apply
15 to a judge of competent jurisdiction for a warrant,
16 rather than an order, authorizing real-time location
17 tracking; requiring an application for a warrant to
18 include a statement of a reasonable period of time
19 that the mobile tracking device may be used or the
20 location data may be obtained in real time, not to
21 exceed a specified limit; authorizing a court to grant
22 extensions that do not individually exceed a specified
23 limit, for good cause; deleting a provision requiring
24 a certification to be included in the application;
25 providing that the court, if it finds probable cause

26 | and finds the required statements in the application,
27 | must grant a warrant; specifying the warrant may
28 | authorize real-time location tracking; providing the
29 | warrant may authorize the use of the mobile tracking
30 | device as specified; requiring the warrant to command
31 | the officer to complete any installation authorized by
32 | the warrant within a certain timeframe; providing
33 | requirements for the return of the warrant to the
34 | judge and service of a copy of the warrant on the
35 | person who was tracked or whose property was tracked;
36 | authorizing a court, for good cause, to postpone the
37 | notice requirement for a specified time period;
38 | requiring that the standards established by Florida
39 | courts for the installation, use, or monitoring of
40 | mobile tracking devices and the acquisition of
41 | location data apply to the installation, use, or
42 | monitoring of any devices and the acquisition of
43 | location data as authorized; deleting the definition
44 | of "tracking device"; authorizing any investigative or
45 | law enforcement officer who is specially designated by
46 | certain persons and who makes specified determinations
47 | to engage in real-time location tracking if a warrant
48 | is later obtained as specified; providing requirements
49 | for engaging in real-time location tracking;
50 | specifying when real-time location tracking must

51 terminate; creating s. 943.44, F.S.; defining the term
52 "historical location data"; providing that a court, if
53 it finds probable cause and finds the required
54 statements in the application, must grant a warrant
55 for acquisition of historical location data;
56 specifying that a warrant may authorize acquisition of
57 historical location data; providing requirements for
58 the return of the warrant on the person whose data was
59 obtained; specifying how a warrant authorizing the
60 acquisition of historical location data must be
61 returned and served; authorizing a court, for good
62 cause, to postpone the notice requirement for a
63 specified time period; requiring that the standards
64 established by Florida courts and the United States
65 Supreme Court for the acquisition of historical
66 location data apply to such acquisition as authorized;
67 providing an effective date.

68
69 Be It Enacted by the Legislature of the State of Florida:

70
71 Section 1. Section 934.01, Florida Statutes, is amended to
72 read:

73 934.01 Legislative findings.—On the basis of its own
74 investigations and of published studies, the Legislature makes
75 the following findings:

76 (1) Wire communications are normally conducted through the
77 use of facilities which form part of an intrastate network. The
78 same facilities are used for interstate and intrastate
79 communications.

80 (2) In order to protect effectively the privacy of wire,
81 ~~and oral,~~ and electronic communications, to protect the
82 integrity of court and administrative proceedings, and to
83 prevent the obstruction of intrastate commerce, it is necessary
84 for the Legislature to define the circumstances and conditions
85 under which the interception of wire, ~~and oral,~~ and electronic
86 communications may be authorized and to prohibit any
87 unauthorized interception of such communications and the use of
88 the contents thereof in evidence in courts and administrative
89 proceedings.

90 (3) Organized criminals make extensive use of wire, ~~and~~
91 oral, and electronic communications in their criminal
92 activities. The interception of such communications to obtain
93 evidence of the commission of crimes or to prevent their
94 commission is an indispensable aid to law enforcement and the
95 administration of justice.

96 (4) To safeguard the privacy of innocent persons, the
97 interception of wire, ~~or~~ oral, or electronic communications when
98 none of the parties to the communication has consented to the
99 interception should be allowed only when authorized by a court
100 of competent jurisdiction and should remain under the control

101 and supervision of the authorizing court. Interception of wire,
102 ~~and oral,~~ and electronic communications should further be
103 limited to certain major types of offenses and specific
104 categories of crime with assurance that the interception is
105 justified and that the information obtained thereby will not be
106 misused.

107 (5) To safeguard the privacy of innocent persons, the
108 Legislature recognizes that the subjective expectation of
109 privacy in real-time cell-site location data, real-time precise
110 global positioning system location data, and historical precise
111 global positioning system location data which society is now
112 prepared to accept is objectively reasonable. As such, the law
113 enforcement collection of the precise location of a person,
114 cellular phone, or portable electronic communication device
115 without the consent of the person or owner of the cellular phone
116 or portable electronic communication device should be allowed
117 only when authorized by a warrant issued by a court of competent
118 jurisdiction and should remain under the control and supervision
119 of the authorizing court.

120 (6) The Legislature recognizes that the use of portable
121 electronic communication devices is growing at a rapidly
122 increasing rate. These devices can store, and encourage the
123 storing of, an almost limitless amount of personal and private
124 information. Often linked to the Internet, these devices are
125 commonly used to access personal and business information and

126 databases in computers and servers that can be located anywhere
127 in the world. The user of a portable electronic communication
128 device has a reasonable and justifiable expectation of privacy
129 in the information that these devices contain.

130 (7) The Legislature recognizes that the use of household
131 electronic devices, including microphone-enabled household
132 devices, is growing at a rapidly increasing rate. These devices
133 often contain microphones that listen for and respond to
134 environmental cues. These household devices are generally
135 connected to and communicate through the Internet, resulting in
136 the storage of and accessibility to daily household information
137 in a device itself or in a remote computing service. Persons
138 should not have to choose between using household technological
139 enhancements and conveniences or preserving the right to privacy
140 in one's home.

141 Section 2. Subsection (2) of section 934.02, Florida
142 Statutes, is amended, and subsections (27) and (28) are added to
143 that section, to read:

144 934.02 Definitions.—As used in this chapter:

145 (2) "Oral communication" means any oral communication
146 uttered by a person exhibiting an expectation that such
147 communication is not subject to interception under circumstances
148 justifying such expectation, including the use of a microphone-
149 enabled household device, and does not mean any public oral
150 communication uttered at a public meeting or any electronic

151 communication.

152 (27) "Microphone-enabled household device" means a device,
 153 sensor, or other physical object within a residence:

154 (a) Capable of connecting to the Internet, directly or
 155 indirectly, or to another connected device;

156 (b) Capable of creating, receiving, accessing, processing,
 157 or storing electronic data or communications;

158 (c) Which communicates with, by any means, another entity
 159 or individual; and

160 (d) Which contains a microphone designed to listen for and
 161 respond to environmental cues.

162 (28) "Portable electronic communication device" means an
 163 object capable of being easily transported or conveyed by a
 164 person which is capable of creating, receiving, accessing,
 165 processing, or storing electronic data or communications and
 166 which communicates with, by any means, another device, entity,
 167 or individual.

168 Section 3. Section 934.21, Florida Statutes, is amended to
 169 read:

170 934.21 Unlawful access to stored communications;
 171 penalties.—

172 (1) Except as provided in subsection (3), whoever:

173 (a) Intentionally accesses without authorization a
 174 facility through which an electronic communication service is
 175 provided, or

176 (b) Intentionally exceeds an authorization to access such
 177 facility,

178
 179 and thereby obtains, alters, or prevents authorized access to a
 180 wire or electronic communication while it is in electronic
 181 storage in such system shall be punished as provided in
 182 subsection (2).

183 (2) The punishment for an offense under subsection (1) is
 184 as follows:

185 (a) If the offense is committed for purposes of commercial
 186 advantage, malicious destruction or damage, or private
 187 commercial gain, the person ~~is~~:

188 1. In the case of a first offense under this subsection,
 189 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
 190 as provided in s. 775.082, s. 775.083, or s. 934.41.

191 2. In the case of any subsequent offense under this
 192 subsection, commits ~~guilty of~~ a felony of the third degree,
 193 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 194 s. 934.41.

195 (b) In any other case, the person commits ~~is guilty of~~ a
 196 misdemeanor of the second degree, punishable as provided in s.
 197 775.082 or s. 775.083.

198 (3) Subsection (1) does not apply with respect to conduct
 199 authorized:

200 (a) By the person or entity providing a wire, oral, or

201 | electronic communications service, including through cellular
 202 | phones, portable electronic communication devices, or
 203 | microphone-enabled household devices;

204 | (b) By a user of a wire, oral, or electronic
 205 | communications service, including through cellular phones,
 206 | portable electronic communication devices, or microphone-enabled
 207 | household devices, with respect to a communication of or
 208 | intended for that user; ~~or~~

209 | (c) In s. 934.09 or, s. 934.23; ~~or s. 934.24~~

210 | (d) In chapter 933; or

211 | (e) For accessing for a legitimate business purpose
 212 | information that is not personally identifiable or that has been
 213 | collected in a way that prevents identification of the user of
 214 | the device.

215 | Section 4. Section 934.42, Florida Statutes, is amended to
 216 | read:

217 | 934.42 Real-time location tracking ~~Mobile tracking device~~
 218 | ~~authorization.~~-

219 | (1) As used in this section, the term:

220 | (a) "Mobile tracking device" means an electronic or
 221 | mechanical device that permits the tracking of the movement of a
 222 | person or an object.

223 | (b) "Real-time location tracking" means:

224 | 1. Installation and use of a mobile tracking device on the
 225 | object to be tracked;

226 2. Acquisition of real-time cell-site location data; or
 227 3. Acquisition of real-time precise global positioning
 228 system location data.

229 ~~(2)(1)~~ An investigative or law enforcement officer may
 230 make application to a judge of competent jurisdiction for a
 231 warrant ~~an order~~ authorizing or approving real-time location
 232 tracking ~~the installation and use of a mobile tracking device.~~

233 (3)(2) An application under subsection (2) ~~(1)~~ of this
 234 ~~section~~ must include:

235 (a) A statement of the identity of the applicant and the
 236 identity of the law enforcement agency conducting the
 237 investigation.

238 (b) A statement setting forth a reasonable period of time
 239 that the mobile tracking device may be used or the location data
 240 may be obtained in real time, not to exceed 45 days from the
 241 date the warrant is issued. The court may, for good cause, grant
 242 one or more extensions for a reasonable period of time, not to
 243 exceed 45 days each ~~certification by the applicant that the~~
 244 ~~information likely to be obtained is relevant to an ongoing~~
 245 ~~criminal investigation being conducted by the investigating~~
 246 ~~agency.~~

247 (c) A statement of the offense to which the information
 248 likely to be obtained relates.

249 (d) A statement as to whether it may be necessary to use
 250 and monitor the mobile tracking device outside the jurisdiction

251 of the court from which authorization is being sought.

252 (4)~~(3)~~ Upon application made as provided under subsection
253 (3) ~~(2)~~, the court, if it finds probable cause ~~that the~~
254 ~~certification~~ and finds that the statements required by
255 subsection (3) ~~(2)~~ have been made in the application, must grant
256 a warrant shall enter an ex parte order authorizing real-time
257 location tracking the installation and use of a mobile tracking
258 device. Such warrant order may authorize the use of the mobile
259 tracking device within the jurisdiction of the court and outside
260 that jurisdiction but within the State of Florida if the mobile
261 tracking device is installed within the jurisdiction of the
262 court. The warrant must command the officer to complete any
263 installation authorized by the warrant within a specified period
264 of time not to exceed 10 calendar days.

265 (5)~~(4)~~ A court may not require greater specificity or
266 additional information beyond that which is required by law and
267 this section as a requisite for issuing a warrant ~~an order~~.

268 (6) Within 10 days after the time period specified in
269 paragraph (3) (b) has ended, the officer executing a warrant must
270 return the warrant to the issuing judge. The officer may do so
271 by reliable electronic means.

272 (7) Within 10 days after the time period specified in
273 paragraph (3) (b) has ended, the officer executing a warrant must
274 serve a copy of the warrant on the person who, or whose
275 property, was tracked. Service may be accomplished by delivering

276 a copy to the person who, or whose property, was tracked or data
 277 obtained or by leaving a copy at the person's residence or usual
 278 place of abode with an individual of suitable age and discretion
 279 who resides at that location and by mailing a copy to the
 280 person's last known address. Upon a showing of good cause to a
 281 court of competent jurisdiction, the court may grant one or more
 282 postponements of this notice for a period of 90 days each.

283 (8)-(5) The standards established by Florida courts and the
 284 United States Supreme Court for the installation, use, or and
 285 monitoring of mobile tracking devices and the acquisition of
 286 location data shall apply to the installation, use, or
 287 monitoring and use of any device and the acquisition of location
 288 data as authorized by this section.

289 ~~(6) As used in this section, a "tracking device" means an~~
 290 ~~electronic or mechanical device which permits the tracking of~~
 291 ~~the movement of a person or object.~~

292 (9) (a) Notwithstanding any other provision of this
 293 chapter, any investigative or law enforcement officer specially
 294 designated by the Governor, the Attorney General, the statewide
 295 prosecutor, or a state attorney acting pursuant to this chapter
 296 who reasonably determines that:

- 297 1. An emergency exists which:
 298 a. Involves immediate danger of death or serious physical
 299 injury to any person or the danger of escape of a prisoner; and
 300 b. Requires real-time location tracking before a warrant

301 authorizing such tracking can, with due diligence, be obtained;
302 and

303 2. There are grounds upon which a warrant could be issued
304 under this chapter to authorize such tracking,
305
306 may engage in real-time location tracking if, within 48 hours
307 after the tracking has occurred or begins to occur, a warrant
308 approving the tracking is issued in accordance with this
309 section.

310 (b) In the absence of an authorizing warrant, such
311 tracking must immediately terminate when the information sought
312 is obtained, when the application for the warrant is denied, or
313 when 48 hours have lapsed since the tracking began, whichever is
314 earlier.

315 Section 5. Section 934.44, Florida Statutes, is created to
316 read:

317 934.44 Historical location data acquisition.—

318 (1) As used in this section, the term "historical location
319 data" means:

320 (a) Historical cell-site location data in the possession
321 of a provider.

322 (b) Historical precise global positioning system location
323 data in the possession of a provider.

324 (2) An investigative or law enforcement officer may make
325 application to a judge of competent jurisdiction for a warrant

326 authorizing or approving the acquisition of historical location
327 data. Such application must include:

328 (a) A statement of the identity of the applicant and the
329 identity of the law enforcement agency conducting the
330 investigation.

331 (b) A specific date range for the data sought.

332 (c) A statement of the offense to which the information
333 likely to be obtained relates.

334 (3) Upon application made under subsection (2), the court,
335 if it finds probable cause and finds that the statements
336 required by subsection (2) have been made in the application,
337 must grant a warrant authorizing the acquisition of historical
338 location data.

339 (4) A court may not require greater specificity or
340 additional information beyond that which is required by law and
341 this section as a requisite for issuing a warrant.

342 (5) The officer executing the warrant for acquisition of
343 historical location data must:

344 (a) Return the warrant to the issuing judge within 10 days
345 after receipt of the records. The officer may do so by reliable
346 electronic means.

347 (b) Serve a copy of the warrant on the person whose data
348 was obtained within 10 days after receipt of the records.

349 Service may be accomplished by delivering a copy to the person
350 whose data was obtained or by leaving a copy at the person's

CS/HB 1405

2019

351 residence or usual place of abode with an individual of suitable
352 age and discretion who resides at that location and by mailing a
353 copy to the person's last known address. Upon a showing of good
354 cause to a court of competent jurisdiction, the court may grant
355 one or more postponements of this notice for a period of 90 days
356 each.

357 (6) The standards established by the courts of this state
358 and the United States Supreme Court for the acquisition of
359 historical location data shall apply to such acquisition as
360 authorized by this section.

361 Section 6. This act shall take effect July 1, 2019.